The Andhra Bank Ltd.

Vs

R. Srinivasan and Others

Civil Appeal No. 508 of 1958

(P. B. Gajendragadkar, K. Subha Rao, M. Hidayatullah JJ)

31.08.1961

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal has been brought to this Court with a certificate issued by the Madras High Court under Article 133(1) (a) of the Constitution and it arises out of a suit (O. S. No. 83 of 1945) filed by the appellant the Andhra Bank Limited against the twelve respondents. This suit was based on two foreign judgments. Exs. P. 1 and P. 3, which has been obtained by the appellant against the said respondents in Hyderabad. Respondent 1 is the son of Raja Bahadur Krishnamachari (hereafter called Raja Bahadur) who died in March, 1943. Respondent 1 and his father were residents of Hyderabad. Raja Bahadur and practising as an advocate in Hyderabad and subsequently he was appointed the Advocate-General. In September, 1935, respondent 1 was indebted to the appellant in the sum of Rs. 14,876-3-7 in respect of an overdraft account. In May, 1938, he became indebted to the appellant in the sum of Rs. 8,217-11-6 in respect of his borrowings on a pledge of sanitary-ware goods. Raja Bahadur had executed a letter of guarantee (Ex. P-18) in January, 1932 whereby he guaranteed the repayment of monies borrowed by respondent 1 up to the limit of Rs. 20,000. As the amounts due from respondent 1 remained unpaid the appellant had to institute two suits in the Hyderabad High Court for their recovery. These suits were numbered 47 and 53 of Fazli 1353. After they were filed in the said High Court they were transferred to the City Civil Court and renumbered as Suits Nos. 62 and 61 of Fazli 1353. Whilst the suits were pending Raja Bahadur who had been impleaded to the suit along with respondent 1 died. Thereupon the appellant joined the present respondents 2 to 12 in those two suits as legal representatives of Raja Bahadur on the ground that they were in possession of different pieces of his properties under a settlement deed of 1940 and a registered will executed by him on August 28, 1942 (Ex. P. 7). In both the suits the appellant obtained decrees with costs on October, 5, 1944. The said decrees directed respondent 1 to pay the whole of the amount claimed by the appellant against him and respondents 2 to 12 to pay Rs. 20,000 which was the limit of guarantee executed by Raja Bahadur. All the respondents were directed to pay interest at 3 per cent, on the amount due against them. Whilst the suits were pending the goods pledged in Suit No. 62 were auctioned and the sale proceeds realised which amounted to Rs. 4,232-1-7 were given credit for whilst the Court passed the decrees in the said suits. According to the appellant an amount of Rs. 27,923-6-5 was still due on the said decrees and so in the present suit the appellant claimed from respondent 1 the whole of the said amount and from respondents 2 to 12 Rs. 20,000 with interest and costs.

Respondent 2 is the son of Raja Bahadur and respondents 6 to 9 are his minor sons. Respondents 3, 4 and 5 are the sons of respondent 1. Respondent 10 is the daughter of Raja Bahadur while respondents 11 and 12 are his grand daughters through his two daughters. Respondent 2 for himself

and as guardian of his minor sons resisted the appellant's claim and contended that the Hyderabad Courts had no jurisdiction over them and therefore the decrees passed by the City Civil Court was without jurisdiction. They also alleged that they had not been served with notice of suit and had not submitted to the jurisdiction of the City Civil Court Respondent 1 did not resist the suit but his sons did. They alleged that they were not the legal representatives of Raja Bahadur and had been improperly added as parties to the Hyderabad suit. They joined respondents 2 and 6 to 9 in their contention that the Hyderabad Court was not a Court of competent jurisdiction and they pleaded that the foreign judgments had not been based on the merits of the case. Respondents 10 to 12 filed similar pleas.

On these pleadings the learned trial judge framed five principal issues. He held that the City Civil Court of Hyderabad had jurisdiction to try the suits and that the contesting respondents were bound by the decrees passed in the said suits. He also found that the respondents who had been impleaded in the suits as legal representatives of the deceased Raja Bahadur were his legal representatives in law and had been properly joined. The other issues framed by the trial court in respect of the other contentions raised by the respondents were also found against them. It is, however, unnecessary to refer to those issues and the findings thereon. In the result a decree was passed in favour of the appellant for the amounts respectively claimed by it against respondent 1 and against the assets of Raja Bahadur in the hands of respondents 2 to 12 with interest at 3 per cent. per annum from the date of the plaint till the date of realisation. The respondents were also directed to pay the costs of the appellant.

Against this decree two companion appeals were filed in the High Court at Madras. Civil Appeal No. 172 of 1947 was preferred by respondents 3 to 5, whereas Civil Appeal No. 194 of 1947 was preferred by respondent 2 and his sons respondents 6 to 9. It was urged by the two sets of respondents in their two appeals that the trial court was in error in holding that the Hyderabad Court was a Court of competent jurisdiction and that the decrees passed by it were valid. It was also urged that the decrees in question were contrary to natural justice and that respondents 2 to 12 were in fact not the legal representatives of Raja Bahadur and so the Hyderabad Court acted illegally in passing the said decrees against them. The High Court has upheld the first contention raised by the respondents and has held that the City Civil Court of Hyderabad which passed the decrees was not competent to try the suits and so the decrees cannot be enforced by a suit under section 13(a) of the Code of Civil Procedure. According to the High Court the appellant had failed to prove that any of the contesting respondents had submitted to the jurisdiction of the Hyderabad Court. Since the High Court came to the conclusion that the decrees were invalid it did not think it necessary to consider the two other arguments urged by the respondents. Consistently with its findings that the decrees were invalid and had been passed by the Hyderabad Court without jurisdiction the High Court allowed both the appeals preferred before it by the two sets of respondents and has dismissed the appellant's suit. It is against this decision that the appellant has come to this Court with a certificate issued by the High Court.

The first question which falls to be considered in the present appeal is whether the City Civil Court at Hyderabad was a Court of competent jurisdiction when it pronounced the judgments in the two suits filed by the appellant in that Court. Under section 13 of the Code a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties except where it has not been pronounced by a Court of competent jurisdiction. It is commonground that when the suits were filed in Hyderabad Raja Bahadur and respondent 1 were residents of Hyderabad and the Hyderabad Court was therefore competent to try the suits at the time when they were filed. The actions in question were actions in personal but they were within the jurisdiction of the

Hyderabad Court at their inception. This position is not disputed. It is also not seriously disputed that respondents 2 to 12 who were added as legal representatives of the deceased Raja Bahadur did not reside in Hyderabad at the relevant time and were foreigners for the purpose of jurisdiction. The High Court has held that under the well established rule of private international law all personal actions must be filed in the Courts of the country where the defendant resides, and since respondents 2 to 12 had not submitted to the jurisdiction of the Hyderabad Court. The Hyderabad Court had no jurisdiction to try the claim against them.

The rule of private international law on which the High Court has relied is no doubt well settled. It has been thus enunciated by Dicey in rule 26 : "When the defendant in an action in personam is at the time of the service of the writ not in England the Court has no jurisdiction to entertain the action" (Dicey "Conflict of Laws", 7th Ed., p. 182). According to Cheshire's "Private International Law" this rule is based on the principle of effectiveness. "Jurisdiction", observes Cheshire, "depends upon physical power, and since the right to exercise power, or, what is the same thing in the present connection, the power of issuing process, is exercisable only against persons who are within the territory of the Sovereign whom the Court represents, the rule at common law has always been that jurisdiction is confined to persons who are within reach of the process of the Court at the time of service of the writ. A Court cannot extend its process and so exert sovereign power beyond its own territorial limits" (Cheshire's "Private International Law", 5th Ed., P. 107). This limitation on the competence of Courts to try personal actions against non-resident foreigners has been emphatically laid down by the Privy Council in the case of Sirdar Gurdyal Singh v. The Rajah of Faridkote ((1894) L. R. 21 I. A. 171). "In a personal action", observed the Earl of Selborne, speaking for the Board, "to which none of these causes of jurisdiction previously discussed apply, a decree pronounced in absentem by a foreign Court to the jurisdiction of which the defendant has not in any way submitted himself is by international law an absolute nullity" (P. 185). This position is not and cannot be disputed; but the question which still remains is whether the High Court was right in applying this rule to the appellant's case. As we have already seen, at their inception the two suits brought by the appellant in the Hyderabad Court were competent. They were brought against residents over whom the Hyderabad Courts had jurisdiction, and so there can be no manner of doubt that as they were filed they were perfectly competent and filed before a Court of competent jurisdiction. If after the death of Raja Bahadur his legal representatives who were non-resident foreigners were brought on the record in the said suits, does the rule of private international law in questions invalidate the subsequent continuance of the said suits in the Court before which they had been validly instituted at the outset ? The High Court has answered this question in favour of the respondents and the appellant contends that the High Court was wrong in giving the said answer.

In this connection it has been urged before us by Mr. Ranganathan Chetty, on behalf of the appellant, that in considering the effect of the rule of private international law on which the High Court has relied it may be relevant to remember that the recent judicial decisions disclose a healthly tendency to relex the rigour of the said rule. In fact Mr. Chetty has invited our attention to Exception 8 which Dicey has stated as one of the exceptions to the rule. Under this Exception, "whenever any person, out of England, is a necessary or a proper party to an action properly brought against some other person duly served with a writ in England, the Court may assume jurisdiction to entertain an action against such first mentioned person as a co-defendant in the action" (Pp. 201, 202). The argument is that this Exception shows that where a personal action is properly brought against one person in an English Court and it is found that a non-resident foreigner is a proper or a necessary party to the action in order to sustain the claim made against the resident in England, it would be open to join the non-resident foreigner as a proper or necessary party notwithstanding the fact that the said foreigner is non-resident and not subject to the jurisdiction of the Court. This Exception is

pressed into service to show that the rule in question is not rigorously enforced in every case.

In support of this argument Mr. Chetty has also invited our attention to the decision of the Probate Court in Travers v. Holley ([1953] P. 246). In that case a husband and wife shortly after their marriage in the United Kingdom in 1937 went out to Sydney in New South Wales and took with them all their belongings. The husband then thought that the Commonwealth offered him better prospects. Having settled down in Sydney the husband invested money in a business which, however, collapsed on the outbreak of war. For a time thereafter he worked on a sheep farm in Northern New South Wales leaving his wife at Sydney where a child had been born in 1938. Later he secured a Commission in the Australian forces and was in due course transferred to the British forces. In August, 1943 the wife filed a petition for divorce in the Supreme Court of New South Wales on the allegation that she had been deserted by her husband since August, 1940. The petition succeeded and the wife was granted a decree which was made absolute in November 30, 1944. The husband was served with a notice of the petition but he did not defend. In due course both the parties remarried. The husband's remarriage, however, proved unsuccessful and so in 1952 he obtained a decree for divorce on the ground that the Australian decree was invalid because at the time it was granted neither husband nor wife was domiciled in New South Wales and the wife by remarrying had been guilty of adultery. Against this decree the wife appealed, and her appeal was allowed. In discussing the validity of the decree passed by the Supreme Court of New South Wales the Court held that "the Courts of New South Wales by section 16(a) of the New South Wales Matrimonial Causes Act, No. 14 of 1899, and the English Courts by section 13 of the Matrimonial Causes Act, 1937 claimed the same jurisdiction, and it would be contrary to principle and inconsistent with comity if the Courts of this Country refused to recognise a jurisdiction which mutatis mutandis they claimed for themselves; and that even if, while in desertion, the husband had reverted to his English domicile of origin the New South Wales Court would not be deprived of jurisdiction". In other words, on the ground of the rule of reciprocity the validity of the decree passed by the Court of New South Wales was not allowed to be effectively challenged by the husband in that case, on the ground that the relevant statutory provisions of the matrimonial law were substantially the same. We ought, however to add that on two subsequent occasions the principle enunciated in the case of Travers ([1953] P. 246), it has been said, should be confined to the special facts and features of that case. In Dunne v. Saban ([1955] P. 178) it is stated that "the observations in Travers v. Holley ([1953] P. 246) as to recognition in certain circumstances of foreign decrees founded upon a jurisdiction similar to ours were directed to a case where the extraordinary jurisdiction of the foreign Court corresponded almost exactly to the extraordinary jurisdiction exercisable by this Court"; and in Mountbatten v. Mountbatten ([1959] P. 43) Davies, J. has raised a whisper of protest against making any further extension of the principle (p. 81). Mr. Chetty, however, contends that the principle of reciprocity is gradually finding more and more recognition in modern decisions, and on the strength of the said decisions it should be held that the relevant statutory provisions on Hyderabad and India being exactly the same the rule of private international law on which the High Court relied should not be rigorously applied to the present case.

In support of his argument Mr. Chetty has also invited our attention to the obiter observations made by Denning, L. J. in In Re Dulles' Settlement (No. 2) Dulles v. Vidler ([195] I Ch. 842). Denning, L. J. observed that the relevant rules prevailing in the Courts in the Isle of Man corresponded with the English rules for service out of the jurisdiction contained in O. 11 and added "I do not doubt that our Courts would recognise a judgment properly obtained in the Manx Courts for a tort committed there, whether the defendant voluntarily submitted to the jurisdiction or not; just as we would expect the Manx Courts in a converse case to recognise a judgment obtained in our Courts against a

resident in the Isle of Man, on his being properly served out of our jurisdiction for a tort committed here". Mr. Chetty points out that this observation again is based on the rule of reciprocity and it illustrates the modern tendency to relax the rigorous application of the rule of private international law in question.

On the other hand it may be pertinent to point out that the present editor of Dicey's "Conflict of laws" has commented on the observations of Denning, L. J. by observing that "this suggested application of the principle of reciprocity is of a more sweeping character than its application to foreign divorces, because in the first place it extends to enforcement and not merely to recognition, and in the second place it would, if logically carried out mean that English Courts would enforce foreign judgments based on any of the very numerous jurisdictional grounds specified in Order 11, rule 1 of the Rules of the Supreme Court". The editor further observes that "it may be doubted whether English Courts would be prepared to carry the principle of reciprocity as far as this, for the suggestion under discussion was made by a single Lord Justice in an obiter dictum, and moreover it is directly at variance with a weighty decision of the Court of Queen's Bench" (Schibsby v. Westenholz ((1870) L. R. Q. R. 155 (Dicey, p. 28). Therefore we do not think that this general argument that the rigour of the rule should be relaxed can be accepted.

However, even if the rule has to be applied the question still remains whether it has to be applied at the inception or the commencement of the suit as well as at a later stage when on the death of one of the defendants his legal representatives are sought to be brought on the record. In dealing with this question it would be relevant to recall the five cases enunciated by Buckley, L. J. in Emanuel Ors. v. Symon ([1908] 1 K. B. 302) in which the Courts of England would enforce a foreign judgment."In actions in personam", observed Buckley, L. J., "there are five cases in which the Courts of this country will enforce a foreign judgment : (1) where the defendant is a subject of the foreign country in which the judgment has been obtained; (2) where he was resident in the foreign country when the action began; (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued; (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained". It would be noticed that all these five cases indicate that the material time when the test of the rule of private international law has to be applied is the time at which the suit is instituted. In other words these five cases do not seem to contemplate that the rule can be invoked in regard to a suit which had been properly instituted merely because on the death of one of the defendants his legal representatives who have been brought on the record are non-resident foreigners. The procedural action taken in such a suit to bring the legal representatives of the deceased defendant on the record does not seem to attract the application of the rule. If that be so it is at the commencement or the initiation of the suit that the rule has to be applied, and if that is so there is no doubt that the two suits in the City Civil Court at Hyderabad were competent when they were brought and the City Civil Court a Hyderabad which tried them had jurisdiction to try them.

In form the claim made by the appellant against respondents 2 to 12 in the Hyderabad Court was in the nature of a personal claim; but in substance the appellant would be entitled to execute its decree only against the assets of the deceased Raja Bahadur in the hands of respondents 2 to 12. That is the true legal position under section 52 of the Code of Civil Procedure in India, and to the same effect is the corresponding provision of the Code of Hyderabad. Besides, when the legal representatives are brought on the record the procedural law both in India and Hyderabad requires that they would be entitled to defend the action only on such grounds as the deceased Raja Bahadur could have taken. In other words, the defence which the legal representatives can take must in the words of O. 22, rule 4, sub-rule (2) be appropriate to their character as legal representatives of the deceased defendant.

No plea which the deceased defendant could not have taken can be taken by the legal representatives. That emphatically brings out the character of the contest between the legal representatives and the appellant. The appellant in substance is proceeding with its claim originally made against the deceased Raja Bahadur and it is that claim which respondents 2 to 12 can defend in a manner appropriate to their character as legal representatives. If the suits originally brought by the appellant in Hyderabad were competent how could it be said that they ceased to be competent merely because one of the defendants died ? The Hyderabad Court had jurisdiction to try the suits when they were filed and there is nothing in the rule of private international law to suggest that the said jurisdiction automatically came to an end as soon as one of the defendants died leaving as his legal representatives persons who were non-resident foreigners.

In considering this aspect of the matter we may refer to the statement in Salmond's "Jurisprudence" that "inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer in propria persona, fulfil, he owns, exercises, and fulfils in the person of a living substitute. To this extent, and in this fashion, it may be said that the legal personality of a man survives his natural personality, until, his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for" (Salmond On 'Jurisprudence', IIth Ed., p. 482). These observations support the appellant's contention that essentially and in substance and for the purpose of jurisdiction the suits brought by the appellant against Raja Bahadur did not alter their character even after his death and continued to be suits substantially against his estate as represented by his legal representatives. If that be the true legal position there would be no scope for urging that the Court which was competent to try the suits as originally filed ceased to be competent to try them because the legal representatives of the deceased Raja Bahadur were non-resident foreigners. To hold otherwise would lead to this result that the suits against Raja Bahadur would abate on his death though the cause of action survives and the decree passed against his assets in the hands of his legal representatives can be effectively executed.

The High Court seems to have thought that the Hyderabad Court's jurisdiction terminated on the death of Raja Bahadur so far as the appellant's claim against him was concerned "and the same cannot avail against his legal representatives", and it has observed that there is judicial authority in support of this conclusion. The decision on which the High Court has relied in support of its conclusion is the judgment of the Full Bench of the Madras High Court in Kanchamalai Pathar v. Ry. Shahaji Rajah Saheb & 5 Ors ((1936) I. L. R. 59 Mad. 461). It is necessary to refer to the relevant facts in that case in order to appreciate the point which was decided by the Full Bench. In execution of a money decree certain immovable property belonging to the judgment-debtor had been attached. A proclamation of sale was then settled and an order passed for sale. At that stage the judgment-debtor died. The decree-holder and his vakil were aware of the death of the judgment-debtor, but even so no application was made under section 50 of the Code of Civil Procedure for leave to execute the decree against the legal representatives of the deceased judgment-debtor, and so no notice was served as required by O. XXI, rule 22, sub-rule (1). The sale was then held and at the sale the property was purchased by a stranger. A question then arose as to whether the sale was void or voidable and the Full Bench held that it was void. Before the Full Bench it was contended that section 50 had reference only to the stage when it became necessary to apply for execution against the legal representatives; it did not apply to a case where the judgment-debtor himself was alive when the attachment was made. The argument was that once the attachment was made the property attached was custodia legis and the liability then was that of the property and not that of the person. That is how, failure to bring the legal representatives on the record under section 50 or to apply for

and obtain notice under O. XXI, rule 22, sub-rule (1) was attempted to be explained. This contention was negatived. It is in the context of this contention and while rejecting it that Varadachari, J., observed that on the death of a person proceedings for recovery of a debt due by him or taken only against his legal representative do not seem to be justified either by legal history or by the language of the Procedure Code. Similarly, in the same context and while rejecting the said argument Venkataramana Rao, J., observed that as soon as a man dies he disappears from the record and there is no party over whom the Court can exercise jurisdiction and it loses jurisdiction in one of its essentials. Then the learned judge has added that no decree can be passed without bringing his representative on the record. After he is brought he becomes the defendant. Similarly after the decree he becomes judgment-debtor. It would be noticed that these observations on which the High Court has relied must be read in the context of the facts before the Court in that case, and their effect must be appreciated in the light of the argument which was rejected. The Full Bench was really concerned to decide whether in regard to property which had been attached in execution of a decree proceedings under section 50 and under O. XXI, rule 22, sub-rule (1) have to be taken or not, and it has held that when a judgment-debtor dies no action can be taken against his estate unless his legal representative is brought on the record and orders are then passed against the assets of the deceased in his hands. It our opinion, therefore, the observations made in that case cannot pressed into service when we are dealing with a very different problem.

The same comment, with respect, falls to be male with regard to similar observations made by Ranade, J. in Erava & Anr. v. Sidramappa Pasare ((1897) I. L. R. 21 Bom. 424). In that case a mortgagee H had obtained a decree against the mortgagor N but before the decree could be executed N died leaving behind him as his heirs his daughters. Subsequently the decree holder applied for execution against the deceased judgment-debtor by his heir and nephew R. R appeared and pleaded that he was not the heir and that the daughters of N were his heirs. Even so the daughters were not impleaded to the execution proceedings nor were notices served on them under section 248 of the Code (Act X of 1877). Ultimately the property was sold and was bought by the decree-holder subject to his mortgage. In due course the sale was confirmed and the sale certificate issued. The daughters of N then sued the mortgagee for redemption and were met with a plea that since the defendant had purchased the property at court sale he was entitled to it free from the claim of the plaintiffs to redeem. This defence was rejected by the High Court. Candy and Jardine, JJ. based their conclusion on the ground that even if the auction purchaser got an absolute title to the property the present suit had been brought within twelve years of the sale and did challenge it and so the plaintiffs are entitled to redeem. Ranade, J., however, based himself on the ground that the sale proceedings were null and invalid and without jurisdiction because the true legal representatives of N had not been brought on the record. It is in this connection that he rejected the argument of the auction purchaser that the auction sale affected the estate of the deceased N only and that it was a mere informality that the true heirs' names were not joined in the record in execution proceedings. In other words, according to Ranade, J., execution proceedings could not properly and validly be continued after the death of N unless his true heirs and legal representatives were brought on the record. It is thus clear that the problem posed before the High Court in that case was very much different from the problem with which we are concerned in the present appeal, and so the observations made in that case cannot be of any assistance to the respondents in support of their contention that the Hyderabad Court ceased to have jurisdiction over the suit because on the death of Raja Bahadur his legal representatives were non-resident foreigners.

Going back to the narrow point which calls for our decision in the present appeal we are inclined to hold that there is no scope for the application of the rule of private international law to a case where the suit as initially filed was competent and the Court before which it was filed had jurisdiction to

try it. In such a case if one of the defendants dies and his legal representatives happen to be non-resident foreigners the procedural step taken to bring them on the record is intended to enable them to defend the suit in their character as legal representatives and on behalf of the deceased defendant and so the jurisdiction of the Court continues unaffected and the competence of the suit as originally filed remains unimpaired. In form it is a personal action against the legal representatives but in substance it is an action continued against them as legal representatives in which the extent of their liability is ultimately decided by the extent of the assets of the deceased as held by them. Therefore we must hold that the High Court was in error in reversing the finding of the trial court on the question about the competence of the Hyderabad Court to try the two suits filed before it. In this view it is unnecessary to consider whether some of the legal representatives had submitted to the jurisdiction of the Hyderabad Court or not.

That takes us to the other argument raised by Mr. Viswanatha Sastri on behalf of the respondents. He contends that respondents 2 to 12 who are in possession of different pieces of property belonging to the deceased Raja Bahadur under the will executed by him cannot be said to be his legal representatives under section 2(11) of the Code. Section 2(11) provides, inter alia, that a legal representative means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. It is well known that the expression "legal representative" had not been defined in the Code of 1882 and that led to a difference of judicial opinion as to its denotation. In Dinamoni Chaudhurani v. Elahadut Khan ((1904) 8 C. W. N. 843), the Calcutta High Court had occasion to consider these conflicting decisions. It was urged before the High Court that the term "legal representative" used in section 234 of the said Code had to be construed strictly and could not include anybody except the heir, executor or the administrator of the deceased. The argument was that the term had been taken from the English law and its scope could not be extended. This argument was rejected by Brett and Woodroffe, JJ. Woodroffe, J. examined the several judicial decisions bearing on the point and observed "from this review of the authorities it will appear judicial decisions have extended the sense of the term "legal representative" beyond that of its ordinary meaning of "administrator, executor, and heir" and though such extension has been attended with doubt and has in some cases been the subject of conflicting decision it appears to me to be too late now to endeavour, however convenient it might be, to secure for the term that which is perhaps its strict and legitimate sense. I agree, therefore, in holding that the term is not limited to administrators, executors, and heirs and am of opinion that it must now be held to include any person who in law represents the estate of a deceased judgment-debtor". It would be relevant to observe that the view thus expressed by Woodroffe, J. has been embodied in the present definition of "legal representative" by section 2(11).

Mr. Sastri concedes that a universal legatee would be a legal representative and he does not challenge that the person who intermeddles even with a part of the estate of the deceased is also a legal representative; but his argument is that a legatee who obtains only a part of the estate of the deceased under a will cannot be said to represent his estate and is therefore not a legal representative under section 2(11). We are not impressed by this argument. The whole object of widening the scope of the expression "legal representative" which the present definition is intended to achieve would be frustrated if it is held that legatees of different portions of the estate of a deceased do not fall within its purview. Logically it is difficult to understand how such a contention is consistent with the admitted position that person who intermeddle with a part of the estate are legal a representatives. Besides, if such a construction is accepted it would be so easy for the estate of a deceased to escape its legitimate liability to pay the debts of a deceased debtor only if the debtor takes the precaution of making several legacies to different persons by his well. Besides, as a matter of construction, if different intermeddlers can represent the estate different legatees can likewise

represent it. In regard to the intermeddlers they are said to represent the estate even though they are in possession of parcels of the estate of the deceased and so there should be no difficulty in holding that the clause "a person who in law represents the estate of a deceased person" must include different legatees under the will. There is no justification for holding that the "Estate" in the context must mean the whole of the estate. Therefore, we are satisfied that the plain construction of section 2(11) is against Mr. Sastri's argument, apart from the fact that considerations of logic and commonsense are equally against it.

In support of his argument Mr. Sastri has referred us to a decision of the Madras High Court in Natesa Sastrigal v. Alamelu Achi ([1950] 1 M. L. J. 476). In that case the Madras High Court no doubt seems to have observed that section 2(11) does not include legatees of part of the estate. With respect, we think the said observation does not represent the correct view about the interpretation of section 2(11).

We accordingly hold that the foreign judgments in the two suits pronounced by the City Civil Court at Hyderabad are judgments pronounced by a Court of competent jurisdiction, and so the defence raised by respondents 2 to 12 under section 13(1) must fail. We have also held that respondents 2 to 12 are the legal representatives of the deceased Raja Bahadur and so it follows that the estate of the deceased Raja Bahadur was sufficiently represented by them when the said judgments were pronounced.

In the result the appeal must be allowed, the decrees passed by the High Court in the two appeals Nos. 172 and 194 of 1947 must be reversed and the decree of the trial court passed in Civil Suit No. 83 of 1945 restored with costs throughout.

Appeal allowed.

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